

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 255 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MRS.GYANESHWARI DUSHYANT SHAH

Versus

DUSHYANTKUMAR RAJENDRA SHAH

Appearance:

MR DJ BHATT for Petitioner
MR KR RAVAL for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/98

ORAL JUDGEMENT

Heard learned advocates Mr. Bhatt for the petitioner and Mr. Raval for the respondents nos. 1 to 3 and the learned APP Mr. Divetia for the respondent no.4.

This petition arises of an application for further investigation made by the petitioner herein in Criminal Case No. 343/96, pending before the learned Metropolitan Magistrate, Court No. 11, Ahmedabad. The

said application was granted by the learned Magistrate under his judgment and order dated 9th April, 1997. Feeling aggrieved, the accused - respondent no.1 herein preferred Criminal Revision Application No. 122/97 before the learned Additional City Sessions Judge, Ahmedabad, which was allowed under the judgment and order dated 5th February, 1998. Feeling aggrieved, the petitioner has preferred the present application under section 397 read with section 401 CrPC.

It appears that the petitioner was married to the respondent no.1 herein on 23rd September, 1992, and out of the said wedlock, she gave birth to a child. Thereafter the petitioner had left her matrimonial home along with the child. She made a complaint before the learned Metropolitan Magistrate, Ahmedabad, against the respondent no. 1, his parents, his brother and sister for offences punishable under sections 406 and 114 of IPC. Pursuant to the said complaint, the police inquiry was ordered and a Criminal Case No. 343/96 has been registered against the said accused persons. Pending the said case, on 7th October, 1996, the petitioner made an application for further investigation. She claimed that the police had not recovered the ornaments and other household articles belonging to her and further investigation is, therefore, required to be ordered. The said application was allowed by the learned Magistrate under his judgment and order dated 9th April, 1997. Feeling aggrieved, the respondents nos. 1 to 3 preferred Criminal Revision Application No. 122/97 which was allowed by the learned Additional City Sessions Judge, Ahmedabad, under his judgment and order dated 6th February, 1998. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Bhatt has appeared for the petitioner and has contended that the ornaments listed in the complaint are "Streedhan" property of the petitioner and she is entitled to possess the same. Further the articles in question are also the articles given to her at the time of her marriage as her trousseau or are purchased by her after marriage from the salary earned by her. The said articles belong to the petitioner and she is entitled to recover the possession of the said articles pending trial. It is, therefore, the bounden duty of the police to recover the said articles from the respondents. Mr. Bhatt has submitted that the learned Additional City Sessions Judge has erred in holding that the application for further investigation made by the petitioner was not maintainable. He has submitted that the reliance placed on the judgment of the Supreme Court in the matter of

RANDHIR SINGH RANA VS STATE (DELHI ADMINISTRATION (1997 (1) SCC, 361) is misplaced. In the matter before the Supreme Court, the court was considering an order directing further investigation made by the Magistrate of his own, while in the present case, the application for further investigation was moved by the petitioner-complainant and having considered the facts on record, same was granted. He has next relied upon the judgment of Supreme Court in the matter of UNION PUBLIC SERVICE COMMISSION VS. S. PAPAIYAH & ORS ({1997} 7 SCC, 614). He has also relied upon the judgments of this court in the matters of BIJAL REVASHANKER JOSHI VS. STATE OF GUJARAT (1997 {1} GLH, 688); and of SARLABEN VIRSING BAMANIYA & ANR VS STATE OF GUJARAT & ANR (1989 {1} GLR, 55)

The petition has been contested by Mr. Raval. He has submitted that the application made by the petitioner is vexatious and has been made for oblique purpose. He has further submitted that the respondents-accused do not dispute that certain ornaments and the household articles belonging to the petitioner are lying in possession of the respondents-accused. He has submitted that the ornaments are lying in the bank-locker of Punjab National Bank, Dudheshwar Branch, Ahmedabad, and the household articles are lying in a flat situated at Satellite Road, Ahmedabad. The respondents-accused are also ready and willing to hand over the said articles to the petitioner if and when she wishes to collect the same. Thus, there being no dispute that the ornaments and the household articles belonging to the petitioner are lying in possession of the respondents-accused, there is no need for further investigation. The said articles can be produced before the court as and when directed or can be handed over to the petitioner in presence of a Court Commissioner if so directed. He has, therefore, submitted that the learned Additional City Sessions Judge has rightly rejected the application for further investigation made under section 173 (8) CrPC by the petitioner herein.

It does appear that the learned Additional City Sessions Judge has set aside the order made by the learned Metropolitan Magistrate ordering further investigation under section 173 (8) of the CrPC relying the judgment in case of Randhir Singh Rana (supra). In the said matter, the court was dealing with an order made under section 173 (8) CrpC made by the Magistrate of his own. In the present case, it can not be said that the learned Magistrate has made the order for further

investigation under section 173 (8) CrPC of his own. The said order has been made pursuant to the application made by the complainant and the learned Magistrate was competent to make the same. However, the question that arises before this court is whether on the facts and in the circumstances of the case, the learned Magistrate was justified in ordering further investigation under section 173 (8) CrPC. In the matter of Union Public Service Commission (supra), on the report submitted by the police, the Magistrate had ordered closure of the case. However, it was found that certain information given by the informant had not been brought to the notice of the court. While submitting the final report, the court held that withholding such vital information created a doubt about the fairness of the investigation and the learned Magistrate ought to have directed further investigation under section 173 (8) CrPC. In the matter of Bijal R.Joshi (supra), the court was considering the power of the police to further investigate and the order of the State Government giving direction for further investigation. In the matter of Sarlaben Virsing (supra) the court was considering whether further investigation under section 173 (8) CrPC can be ordered by the Magistrate alone. The court held that power under section 173 (8) CrPC can be exercised not necessarily by the Magistrate, but any court including the Sessions Court. On the facts of the present case, neither of the above judgments shall apply.

It can not be disputed that in the given set of facts, the learned Magistrate shall have power to order further investigation in respect of a complaint made before it. In the present case also, the learned Magistrate can not be said to have exercised the power not vested in him. However, considering the facts of the present case, more particularly, there being no dispute that the ornaments and the household articles belonging to the petitioner are lying in the possession of the respondents-accused, and that they are ready and willing to handover the same to the petitioner, if and when she desires to collect the same, the question of further investigation would not arise. In my view, the learned Magistrate ought not to have ordered further investigation.

In view of the above facts, the application is dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI*